



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-575

Appeal M_9500097

Regional Municipality of Haldimand-Norfolk



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Regional Municipality of Haldimand-Norfolk (the Region) received a request for access to an Order to Comply issued to the owners of an identified property (the subject property).

The Region denied access to the record on the basis that its disclosure would interfere with a law enforcement matter (section 8(1)(a) of the Act). The requester appealed this decision.

During mediation, the Region disclosed certain portions of the record to the appellant. The appellant agreed to exclude any names and addresses contained in the document from the scope of the appeal. Thus, only portions of the second paragraph on page 1 of the record and the second and third paragraphs on page 2 remain at issue.

A Notice of Inquiry was sent to the Region and the appellant. Representations were received from the Region only.

DISCUSSION:

LAW ENFORCEMENT

Section 8(1)(a) of the Act states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

interfere with a law enforcement matter.

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of "law enforcement". This term is defined in section 2 of the Act as follows:

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The Region submits that the record relates to the enforcement of a zoning by-law, a law enforcement activity within the responsibility of the Region. Previous orders of the Commission have established that enforcement of zoning by-laws is a law enforcement matter. On this basis, I find that the Order to Comply relates to a law enforcement matter.

The Order to Comply addresses the activity which is taking place on the subject property. Under the zoning by-law, certain uses are permitted on the subject property. The Order to Comply was issued as a result of complaints made to the Region concerning the activities that were taking place on the subject property. If land use does not conform to that permitted by the zoning by-law, compliance may be achieved by the cessation of the activity or by changing the law to regularize the use.

In this case, after the Order to Comply was issued, the owner of the subject property applied for an amendment to the District Plan and the zoning by-law to permit the uses currently being carried out. A public meeting was held pursuant to the Planning Act, to provide information to, and receive comments from, the public concerning the application.

It is the position of the Region that to disclose the balance of the Order to Comply would interfere with the rezoning application proceedings. The Region states that it is part of the approval authority for the land use changes, and that it should not appear biased in its consideration of the rezoning application. It submits that disclosure of the information contained in the Order to Comply "... could be perceived as taking a position against the rezoning applications prior to the applications appearing before the Region's Committee and Council".

The Region has not explained how disclosure of the outstanding information in the Order to Comply could interfere with the rezoning application process. As far as zoning is concerned, the Region appears to function in two roles. First, the Region has the authority to enforce the zoning by-laws. The Region did so when it issued the Order to Comply. The owner of the subject property then decided to apply for the amendments in order to regularize the uses currently being carried out on the subject property.

The Region's second role is as part of the approval authority for land use changes. Thus, the Region is also involved in deciding rezoning applications. However, the Region has provided no explanation as to how it could appear to be biased in the rezoning applications because it has enforced the zoning by-laws. In my view, enforcement of a zoning by-law, and deciding rezoning applications are two very different things. The former results from a consideration of the interpretation of the zoning by-law as it currently exists; the latter involves a decision as to whether the zoning should be changed.

The Region also states that disclosure of portions of the Order to Comply could be misleading as some of the information contained in the document is not currently relevant because the rezoning applications have been filed. Again, the Region has not explained how disclosure of this information could indicate that it is biased with respect to the applications.

Finally, the Region states that disclosure of certain of the information could more generally interfere with its by-law enforcement program in that it would reveal how the Region dealt with this matter. The Region states that the public might extrapolate this to other law enforcement activities. However, it has provided no information to support this assertion.

In summary, I find that the Region has not provided me with sufficient evidence to indicate that disclosure of the remaining portions of the Order to Comply could reasonably be expected to interfere with the rezoning applications process. Accordingly, section 8(1)(a) of the Act does not apply.

ORDER:

1. I order the Region to disclose to the appellant the balance of the Order to Comply within fifteen (15) days of the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Region to provide me with a copy of the record I have ordered disclosed pursuant to Provision 1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

July 28, 1995